

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No: EB-10-KC-0122
)	
Insight Consulting Group of Kansas City, LLC)	NAL/Acct. No.: 201132560005
)	
Kansas City, MO)	FRN: 0018534495
)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: July 29, 2011

Released: July 29, 2011

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (“NAL”), we find that Insight Consulting Group of Kansas City, LLC (“Insight”), operator of an Unlicensed National Information Infrastructure (“U-NII”) transmission system in Kansas City, Missouri, apparently willfully and repeatedly violated section 301 of the Communications Act of 1934, as amended (“Act”),¹ and section 15.1(b) of the Commission’s rules (“Rules”)² by operating an intentional radiator not in accordance with Part 15 of the Rules³ and without a license. We conclude that Insight is apparently liable for forfeiture in the amount of seventeen thousand dollars (\$17,000). We further order Insight to submit a sworn statement certifying that it is now operating its U-NII systems in compliance with FCC rules and applicable authorizations.

II. BACKGROUND

2. Part 15 of the Rules allows devices employing relatively low-level radiofrequency (“RF”) signals to be operated without individual licenses, as long as their operation causes no harmful interference to licensed services and the devices do not generate emissions or field strength levels greater than a specified level.⁴ Such devices must be authorized and operated in accordance with the Part 15 Rules.⁵ For example, section 15.5 of the Rules provides that operation of an intentional radiator must not cause harmful interference and, if harmful interference occurs, the operation of the device must cease.⁶ Operating a Part 15 device in a manner that is inconsistent with the Part 15 Rules requires a license pursuant to section 301 of the Act. Such operation without a license violates that provision.⁷

¹ 47 U.S.C. § 301; *see also* 47 C.F.R. § 15.407.

² 47 C.F.R. § 15.1(b).

³ 47 C.F.R. §§ 15.1 *et seq.*

⁴ *Revision of Part 15 of the Rules Regarding the Operation of Radio Frequency Devices Without an Individual License*, First Report and Order, 4 FCC Rcd 3493 (1989).

⁵ 47 C.F.R. §§ 15.1(a), 15.5.

⁶ 47 C.F.R. § 15.5.

⁷ 47 C.F.R. § 15.1(b).

3. As part of its ongoing coordination efforts with the Federal Aviation Administration (“FAA”), the Enforcement Bureau received a complaint about radio emissions causing interference to the FAA’s Terminal Doppler Weather Radar (“TDWR”) installation serving the Kansas City International Airport. TDWR installations exist at 45 major airports in the United States and Puerto Rico and assist air traffic controllers in detecting low-altitude wind shear that can pose a risk to aircraft.⁸

4. On February 4, 2011, an agent from the Enforcement Bureau’s Kansas City Office (“Kansas City Office”) monitored radio transmissions on the frequencies 5540 MHz and 5600 MHz in the area known as downtown Kansas City. These transmissions included a Service Set Identifier (“SSID”) of “icg.oak.s2” and a Media Access Control (“MAC”) address of “00:15:6D:F4:3C:AA” for the transmissions observed on the frequency 5540 MHz and an SSID of “icg.oak-ne” and a MAC address of “00:15:6D:E4:DD:B0” for transmissions observed on the frequency 5600 MHz.

5. On February 18, 2011, agents from the Kansas City Office confirmed using direction-finding techniques that Insight’s U-NII transmitter on the roof of the Oak Tower Building, 324 E. 11th Street, Kansas City, Missouri, in the downtown Kansas City area, was operating on the frequency 5600 MHz. An inspection of Insight’s operation on that building found that the transmitter was a Ubiquiti model Rocket M5 operating on the frequency 5600 MHz with its control settings configured with an SSID of “icg.oak-ne” and a MAC address of “00:15:6D:E4:DD:B0.” The Rocket M5 model is certified for use as a Part 15 intentional radiator only in the 5745-5825 MHz band⁹ and is not certified as a U-NII intentional radiator.¹⁰ The agents conducted additional tests and found that when the frequency for Insight’s device was changed from the frequency 5600 MHz, the interference to the TDWR ceased, thereby confirming that Insight’s operations were the source of the interference. In addition to the operation on 5600 MHz, agents from the Kansas City Office confirmed using direction-finding techniques that Insight was operating a second Ubiquiti Rocket M5 transmitter on the frequency 5540 MHz and this second transmitter had its control settings configured with an SSID of “icg.oak-s2” and a MAC address of “00:15:6D:F4:3C:AA. Both of Insight’s U-NII transmitters had their configuration software set to a country code of “Compliance Test” instead of the proper country code of “United States” and their SSIDs and MAC addresses matched the information obtained on February 4, 2011. According to Commission records, Insight does not hold a license to operate on either the frequency 5540 MHz or 5600 MHz from this location in downtown Kansas City.

III. DISCUSSION

6. Section 503(b) of the Communications Act of 1934, as amended (“Act”),¹¹ provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. Section 312(f)(1) of the

⁸ MIT Lincoln Laboratories, <http://www.ll.mit.edu/mission/aviation/faawxsystems/tdwr.html> (last visited Jan. 26, 2011).

⁹ Agents from the Kansas City Office were unable to determine the FCC IDs for the Rocket M5’s in use. However, there are five FCC IDs associated with Ubiquiti Rocket M5 devices: SWX-M5, SWX-M5B, SWX-M5G, SWX-M5L and SWX-M5D. All of these FCC IDs are certified as Part 15C devices and are authorized to operate only in the 5745 MHz – 5825 MHz band.

¹⁰ 47 C.F.R. § 15.403(s) (defining U-NII devices as “[i]ntentional radiators operating in the frequency bands 5.15-5.35 GHz and 5.470-5.825 GHz that use wideband digital modulation techniques and provide a wide array of high data rate mobile and fixed communications for individuals, businesses, and institutions.”). Although Insight’s devices were not authorized to operate in the U-NII bands, they are subject to the U-NII rules (47 C.F.R. 15.401-15.407) because Insight operated them as U-NII devices on U-NII frequencies.

¹¹ 47 U.S.C. § 503(b).

Act defines willful as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.¹² The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act¹³ and the Commission has so interpreted the term in the section 503(b) context.¹⁴ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁵ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁶

7. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license.¹⁷ Part 15 of the Rules,¹⁸ however, sets forth conditions under which intentional radiators may operate without an individual license. Pursuant to section 15.1(b) of the Rules, “the operation of an intentional or unintentional radiator that is not in accordance with the regulations in [Part 15] must be licensed pursuant to the provisions of section 301 of the Communications Act....”¹⁹ Thus, if an intentional radiator fails to comply with all of the applicable conditions set forth in Part 15 of the Rules, it is no longer covered by the unlicensed provisions of those Rules and must obtain an individual license pursuant to section 301 of the Act.

8. On February 4 and 18, 2011, as described above, agents from the Kansas City Office observed Insight consciously operate two Part 15 intentional radiators, Ubiquity Rocket M5’s, on the center frequencies of 5540 MHz and 5600 MHz from the rooftop of a building in Kansas City, Missouri. Those devices are not certified for use on either frequency of 5540 MHz or 5600 MHz. Therefore, Insight’s operations did not comply either with the device’s Equipment Authorization or Part 15 requirements and thus required a license. According to Commission records, Insight does not hold a license to operate on the frequencies 5540 MHz or 5600 MHz in Kansas City, Missouri. Thus, based on the evidence before us, we find that Insight apparently willfully and repeatedly violated section 301 of the Act and section 15.1(b) of the Rules by operating unlicensed radio transmitters on February 4 and 18, 2011.

¹² 47 U.S.C. § 312(f)(1).

¹³ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., section 503)... As defined ... ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms ...”).

¹⁴ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”).

¹⁵ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision, Inc.*”) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁶ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

¹⁷ 47 U.S.C. § 301.

¹⁸ See 47 C.F.R. §§ 15.1 *et seq.*

¹⁹ 47 C.F.R. § 15.1(b).

9. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.²⁰ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.²¹ Because Insight caused interference to the Kansas City International Airport's TDWR and posed a safety hazard to air traffic, we believe an upward adjustment in the forfeiture amount for Insight's apparent unlicensed operation is warranted. Based on these factors, we find that an upward adjustment from \$10,000 to \$17,000 is appropriate for Insight's apparent unauthorized operation.²²

10. Although we could impose larger upward adjustments for Insight's apparent violations, we decline to do so, based on the particular circumstances of this case. We caution Insight and other U-NII service providers, however, that we may do so in future cases if the circumstances warrant or if our current approach does not serve as a sufficient deterrent. Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we therefore conclude that Insight is apparently liable for a forfeiture of \$17,000 for violations of section 301 of the Act and section 15.1(b) of the Rules.

11. Finally, we order Insight to submit a written statement signed under penalty of perjury by an officer or director of the company stating that the company is now operating its U-NII devices in compliance with their Equipment Authorization and the Commission's Rules. This statement must be provided to the Kansas City Office at the address listed in paragraph 17 within thirty days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.311, 0.314 and 1.80 of the Commission's rules, Insight Consulting Group of Kansas City, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seventeen thousand dollars (\$17,000) for violations of section 301 of the Act and section 15.1(b) of the Rules.²³

13. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Insight Consulting Group of Kansas City, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. **IT IS FURTHER ORDERED** that, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Insight Consulting Group of Kansas City, LLC **SHALL SUBMIT** a sworn statement as described in paragraph 11 to the Kansas City Office listed below.

15. Insight Consulting Group of Kansas City, LLC is **HEREBY NOTIFIED** that its operation of a Ubiquiti Rocket M5 transceiver resulted in harmful interference to the FAA's TDWR system that serves the Kansas City International Airport. Insight Consulting Group of Kansas City, LLC is **HEREBY WARNED** that any further operation of any U-NII device, including the Ubiquiti Rocket M5 transceiver, on any frequency, and at any location, that results in interference to the FAA's TDWR

²⁰ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²¹ 47 U.S.C. § 503(b)(2)(E).

²² The base forfeiture amount for interference is \$7,000. *See* 47 C.F.R. § 1.80.

²³ 47 U.S.C. §§ 301, 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 15.1(b).

system serving the Kansas City International Airport may be considered a willful violation of section 333 of the Act, which prohibits willful interference to any radio communication of any station licensed or authorized under the Act or operated by the United States Government.²⁴

16. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁵ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, Insight Consulting Group of Kansas City, LLC will send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

17. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, 520 NE Colbern Rd., Second Floor, Lees Summit, MO 64086 and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed to SCR-Response@fcc.gov.

18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

19. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Insight Consulting Group of Kansas City, LLC, 600 E. Admiral Blvd., Suite 1201, Kansas City, MO 64106.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

²⁴ 47 U.S.C. § 333.

²⁵ See 47 C.F.R. § 1.1914.